

THIS DISPOSTION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB NOV. 19 ,98

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Home Care Developments, Inc.

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Serial No. 74/618,806

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Adrienne L. White of Burns, Doane, Swecker & Mathis for  
Home Care Developments, Inc.

Joyce A. Ward, Trademark Examining Attorney, Law Office 105  
(Thomas Howell, Managing Attorney)

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Before Seeherman, Hohein and Walters, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Home Care Developments, Inc. has appealed from the  
refusal of the Trademark Examining Attorney to register  
SIC-KIT for "medical bags, sold empty."<sup>1</sup> A final refusal of  
registration issued on the basis that applicant failed to

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<sup>1</sup> Application Serial No. 74.618,806, filed January 9, 1995,  
asserting first use and first use in commerce in August 1994.

provide adequate specimens to support use of the mark with the identified goods.

Applicant and the Examining Attorney submitted briefs, and applicant filed a reply brief. An oral hearing was not requested.

Section 45 of the Trademark Act, 15 U.S.C. 1127, states, in part, that "a mark shall be deemed to be in use in commerce (1) on goods when-- (A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and (b) the goods are sold or transported in commerce...." Trademark Rule 2.56 provides, in part, that an application based on use in commerce must "include three specimens of the trademark as used on or in connection with the goods in commerce. The specimens shall be duplicates of the labels, tags, or containers bearing the trademark, or the displays associated with the goods and bearing the trademark...."

The question at issue before us is whether applicant's specimens constitute displays associated with the goods.<sup>2</sup>

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<sup>2</sup> We note that in its application applicant stated that "the mark is used by placing it on the goods, and/or their containers,

The specimens submitted by applicant consist of a two-sided, one page glossy 8½ by 11 sheet on which SIC-KIT appears in large letters at the top of the page, and below which is a medical bag with "Home Care," shown on its side. The text material on both sides refers to the features of the bag, and includes such statements as "Everything a caregiver needs is in one easy-to-carry bag," "Lightweight, with shoulder strap for easy carrying," and "Bag is stain resistant and machine washable."

Applicant and the Examining Attorney have discussed at great length whether the specimens, as direct mail pieces, constitute displays associated with the goods. However, we do not believe it is necessary to make such a determination because the specimens have also been used as displays at trade shows. According to the declaration of Derick Nance, applicant's president, the information sheets which were submitted as specimens are displayed periodically at trade

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and/or the displays associated therewith, and/or on tags, and/or labels affixed thereto, and/or in other suitable ways." It appears, in light of the statements in its briefs, that applicant does not use the mark on the goods, their containers, tags, labels or "other suitable ways", and that the only manner in which applicant actually claims to use its mark is as a display associated with the goods. Although the statements made in the "manner of use" clause cannot be said to be false, in that applicant has used the connective word "or" in listing the ways in which the mark is used, the better practice is to list in the "manner of use" clause only those ways in which the mark is actually used.

shows along with the bags themselves. Mr. Nance also stated that a customer who wishes to purchase a bag based on its review of the information sheet then contacts the party identified on the sheet, either in writing or by telephone, with the particulars of the order.

We find that the placement of the information sheets, with the prominent depiction of the mark and the goods, along with the bags at the trade shows constitutes a display associated with the goods. See **In re Ancha Electronics, Inc.**, 1 USPQ2d 1318 (TTAB 1986). Because of the declaration of applicant's vice president, this case differs from **In re MediaShare Corp.**, 43 USPQ2d 1304 (TTAB 1997), in which the Board pointed out that there was no explanation or evidence concerning the possible use of the specimens in point-of-sale presentations, and therefore applicant failed to show that the specimens functioned as displays associated with the goods.

Decision: The refusal of registration is reversed.

E. J. Seeherman

G. D. Hohein

C. E. Walters

**Ser No.** 74/618,806

Administrative Trademark Judges  
Trademark Trial and Appeal Board